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State Elections Enforcement Commission
Office of Government Accountability
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Comments on the Proposed Declaratory Ruling 2013-02

The League of Women Voters of Connecticut is a nonpartisan, statewide organization committed to effective public policy and the active involvement of citizens in their government. The League believes that the right to vote with confidence in the election process, *with adequate information with which to make informed decisions*, must be guaranteed to all.

LWVCT has strongly supported campaign finance reform efforts with the goals of ensuring the public's right to know, combating corruption and undue influence, encouraging candidates to run for public office and re-connecting with citizens. We actively worked for passage of the historic 2005 Campaign Finance Reform law and subsequent amendments in response to court rulings. We also were strong proponents of the 2010 law *AAC Independent Expenditures* that included "stand by your ad" provisions and expanded language on what constitutes "coordination." We believe that more can be done in the public interest to ensure that Connecticut citizens have adequate information to make informed decisions at the ballot box.

The League of Women Voters of Connecticut appreciates the opportunity to submit comments with respect to *PROPOSED DECLARATORY RULING 2013-02: Contributions to Political Committees, Independent Expenditures and State Contractor Contribution Limitations*. This ruling seeks to clarify the contribution, reporting and disclosure requirements with respect to organizations that operate as independent expenditure-only entities under Public Act 13-180 *AAC Disclosure of Independent Expenditures and Changes to Other Campaign Finance Laws and Election Laws* (the "Act"). In addition, the ruling addresses state contractor issues not raised in the request for a declaratory ruling.

Need for Declaratory Ruling

On October 9, 2013, the law firm Perkins Coie submitted a request for a declaratory ruling regarding the State Elections Enforcement Commission's interpretation of the Act as it related to certain of its clients. Among other things, the firm sought a ruling that Section 527 organizations "whose only election-influencing activity in Connecticut is the making of independent expenditures are not required to register as 'political committees'" and "may accept unlimited covered transfers, make unlimited independent expenditures, and satisfy their reporting obligations by complying with section 8(a) of the new law." Perkins Coie Request for a Declaratory Ruling, pp. 1, 8.

The firm posited three scenarios for consideration by the Commission: (1) an organization using general treasury funds to make independent expenditures in Connecticut, (2) an organization that solicits funds specifically for use in Connecticut and spends those funds on independent expenditures and (3) two or more organizations who join together to form a new entity whose major purpose is making independent expenditures in Connecticut.

Clarification by the SEEC of the provisions of Sections 8 and 33 of the Act is necessary to effectuate the legislative intent of the Act to increase disclosure of independent expenditure activity and enable the electorate to make informed decisions regarding candidates for state level offices.

In considering the request, the SEEC described three factual scenarios in its proposed ruling:

- 1) A 527 organization that does not accept donations earmarked to make independent expenditures to influence Connecticut elections ("Organization 1").
- 2) A 527 organization that forms to make independent expenditures to influence Connecticut elections, and that solicits and receives earmarked donations ("Organization 2").
- 3) A 527 organization that receives and spends funds to do many things in addition to making independent expenditures to influence Connecticut elections, and that does accept donations earmarked to make such independent expenditures in Connecticut ("Organization 3").

Petitioners are asking whether the 2013 Act eliminated the requirement for persons to form a political committee when soliciting or receiving money and making independent expenditures to promote, attack, support or oppose Connecticut candidates or parties. As explained below, the League of Women Voters of Connecticut **supports the proposed SEEC ruling that a person soliciting or raising donations to make independent expenditures in order to influence Connecticut elections is required to register a political committee and comply with all disclosure rules.**

However, we believe that it is unnecessary and ill-advised to include state contractor issues in this ruling, and that the portions of the ruling that deal with those issues should be deleted.

Requirement to Form a Political Committee

As noted in the proposed ruling, "the legislative history and circumstances surrounding the 2013 Act unequivocally instruct that the 2013 Act was intended to increase disclosure and to close off loopholes where independent spenders could mask the source of their funds." Proposed Declaratory Ruling, p. 16.

Under the Act, "covered transfers" and "contributions" are treated differently.

Contributions must generally be disclosed no matter when they are solicited and received. General Statutes §9-608(c). They also must be made by individuals, or by committees which in turn register and file periodic reports, disclosing the money they spend comes from. General Statutes §9-608(c). Covered transfers, by contrast, only have to be disclosed on a incident-specific report filed by the person making or obligating to make the independent expenditure, and only under certain circumstances (if such covered transfers are over \$5000 in the aggregate, and if they are donated within the twelve month period before a primary or election to a person that makes an independent expenditure one hundred and eighty days before the primary or election, among other exceptions). Public Act 13-180 section 1 and 8. Because a covered transfer may be made by other groups organized under section 527 or 501(c)(4) of the Internal Revenue Code, which do not have the same disclosure requirements for their incoming money, it is often impossible to establish the identity of the individual or business that is truly the source of the monies being spent.

Proposed Declaratory Ruling, p. 18.

The League agrees with the SEEC that "it makes sense that Public Act 13-180, which was meant to respond to *Citizens United* and resulting growing concerns regarding "dark money" and anonymous expenditures, would continue to regulate the solicitation or receipt of contributions where permissible." Proposed Declaratory Ruling, p. 19.

Section 8 of the Act provides that “[a]ny person....may, *unless otherwise restricted or prohibited by law*,...make unlimited independent expenditures...and accept unlimited transfers....” Section 33 provides that “[e]xcept with respect to an individual acting alone, or with respect to a group of two or more individuals acting together that receives funds or makes or incurs expenditures not exceeding one thousand dollars in the aggregate, *no contributions may be made, solicited or received* and no expenditures, other than independent expenditures, may be made directly or indirectly, in aid of or in opposition to the candidacy for nomination or election of any individual or any party” without the formation of a political committee. [Emphasis supplied]

Given the legislative intent to increase disclosure, the constitutionality of registration and disclosure requirements generally, the rules of statutory construction and the limiting language of Section 8 of the Act, “unless otherwise restricted or prohibited by law,” the League believes that the SEEC’s interpretation of sections 8 and 33 of the Act is the correct one and that a person that receives donations earmarked to influence Connecticut elections, including an entity which only makes independent expenditures, must form a political committee and disclose all funds received and spent. The only exception to the requirement to register a political committee should be for an entity that only makes independent expenditures and does so solely from its own treasury funds.

State Contractor Issues

Petitioner’s request for declaratory ruling makes no mention of state contractors. Rather, “[b]ecause the issues presented in the petitioner’s first questions of the petition are substantially related to issues raised to Commission staff in the form of requests for general compliance advice by other members of the regulated community concerning state contractors, in order to give clear guidance the Commission will address the state contractor issues in this declaratory ruling as well.” Proposed Declaratory Ruling, p.1.

The League is concerned that the proposed declaratory ruling opens up the possibility for state contractors to make contributions again to influence Connecticut elections. While the League believes that clear guidance is generally welcome, we believe that in this case, it requires legislative action or at minimum separate guidance.

Because the state contractor issue was not raised in the original request for a declaratory ruling and because we believe that the issue is best left to the legislature or, at the very least explored in depth in its own declaratory ruling, the League suggests that the Commission should remove those portions dealing with state contractors from its final version of Declaratory Ruling 2013-02.

Since *Citizens United*, a vast array of nonprofits have been established in order to influence election outcomes through election ads and other types of independent expenditures. The League of Women Voters believes that Connecticut citizens have the right to know the sources of funding being spent to influence their votes. This ruling is consistent with the legislative intent to increase transparency and promotes the public’s right to know about the entities seeking to influence election outcomes in our state.

Thank you again for the opportunity to comment on the proposed ruling.

Very truly yours,

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